Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1814

RELLA VERDE APARTMENTS, INC., *et al.*,
Petitioners,

v.

STATE OF ARIZONA, COUNTY OF PIMA, STATE BOARD OF PROPERTY TAX APPEALS, COUNTY BOARD OF EQUALIZATION, PIMA COUNTY BOARD OF SUPERVISORS, PIMA COUNTY ASSESSOR, PIMA COUNTY TREASURER,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

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TABLE OF CONTENTS

		Page
OPINIONS BELOW		2
JURISDICTION		3
QUESTIONS PRESENTED		4
CONSTITUTIONAL PROVISIONS INVOLVED		4
STATEMENT OF FACTS		5
HOW FEDERAL QUESTION WAS RAISED		11
REASONS FOR GRANTING THE WRIT		11
Appendix A –	Denial of the Petition for Review, Supreme Court of the State of Arizona, March 17, 1976	1a
Appendix B –	Denial of the Motion for Rehearing Court of Appeals of the State of Arizona, Division Two, February 24, 1976	2a
Appendix C –	Opinion of the Court of Appeals of Arizona, Division Two, January 20, 1976	3a
Appendix D –	Statutory Class 3 Properties (A.R.S. § 42-136)	20a
Appendix E –	Standard Land Use Classification Codes	24a

TABLE OF AUTHORITIES

Cases: Page

Carpenter v. State Board of Equalization,
178 Neb. 611, 134 N.W.2d 272 (1965) 16

Charleston Federal Savings & Loan Assoc. v. Alderson,
324 U.S. 182, 65 S.Ct. 624, 89 L.Ed.857 . . . . . 13, 15

Chicago Great Western R. Co. v. Kendall,
266 U.S. 94, 98, 99, 45 S.Ct. 55, 69 L.Ed. 183 . . . 14

City of Newark v. Essex County Board of Taxation,
124 N.J. Super. 76, 304 Atl. 2d 761 (1973) 16

County of Blaine v. State Board of Equalization,
180 Neb. 471, 143 N.W.2d 880 (1966) 16

County of Kearney v. State Board of Equalization,
183 Neb. 329, 160 N.W.2d 179 (1968) 16

Cumberland Coal Co. v. Board of Revision of Tax Assessments in Green County,
52 S.Ct. 48, 284 U.S. 23, 76 L.Ed 146 . . 12, 14, 15, 16

Cummings v. Bank,
101 U.S. 153, 25 L.Ed 903 12

Gate County v. State Board of Equalization,
185 Neb. 749, 178 N.W.2d 759 (1970). 16

Greene v. Louisville & Interurban Railroad Co.,
244 U.S. 499, 37 S.Ct. 673, 61 L.Ed 1280 12

Raymond v. Chicago Union Traction Co.,
207 U.S. 20, 28 St. Ct. 7, 52 L.Ed 78 . . . . 12, 14, 15

Sioux City Bridge Co. v. Dakota County,
260 U.S. 441, 43 S.Ct. 190, 67 L.Ed 340. . . . . 12, 14

Page

Southern R. Co. v. Watts,
260 U.S. 519, 526, 43 S.Ct. 192, 67 L.Ed 375 14

Sparks v. McCluskey,
84 Ariz. 15, 291 P.2d 791 (1955);
84 Ariz. 283, 327 P.2d 295 (1958 17

Stanley v. Supervisors,
121 U.S. 535, 7 S.Ct. 1234, 30 L.Ed 1000 12

Sunday Lake Iron Co. v. Wakefield,
247 U.S. 350, 38 S.Ct. 495, 62 L.Ed 1154; . . .
247 U.S. 350, 352, 353, 38 S.Ct. 495, 62 L.Ed 1154 . . . . . 12, 14

Other Authorities:

28 U.S.C. § 1257(3) 3

Article IX, Section I 5

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Petitioners,

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STATE OF ARIZONA, COUNTY OF PIMA,
STATE BOARD OF PROPERTY TAX APPEALS,
COUNTY BOARD OF EQUALIZATION, PIMA
COUNTY BOARD OF SUPERVISORS, PIMA
COUNTY ASSESSOR, PIMA COUNTY TREASURER,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

Petitioners[1] pray that a Writ of Certiorari issue to review the denial of the Petition for Review by the Arizona Supreme Court in the above entitled case on March 16, 1976.

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[1] Petitioners include: Rella Verde Apartments, Inc., Pioneer National Trust Co. of Arizona, Trust No. 10578; Charles R. Frisch, Benjamin L. Frisch & Elizabeth R. Frisch; Monterey Apartments Co.,
(continued)

OPINIONS BELOW

The Arizona Court of Appeals issued its opinion on January 20, 1976, amended it on February 20, 1976, and denied the Petition for Re-hearing on February 24, 1976. The Court of Appeal's opinion is reported in 25 Ariz. App. 458, 544 P.2d 675.

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[1] (continued)
Stewart Title & Trust Co. of Tucson, Trust No. 0749; Randolph J. & Norma L. Spiett; Joseph W. & Helen L. Nelson, Lawyers Title of Arizona, Trust No. 6880-T; Fort Lowell Park Apartments, Inc.; Avalon Johnson; John M. & Anna M. Sweeney; Monterey Water Co. & Rancho del Oro Co.; Erin L. & Irene E. Ferguson; Spanish Trail Apartments; Henry B. & Janis Harris; John D. & Helen H. Schannep; James B. & Mary M. Franklin; Arnold & Beatrice Kesten; Joseph & Ethel Timan; Irving M. & Lavern G. Litz; Barton Windkur; Inez L. Ballinger; Hyman Littman & Sigmond Benedik; Clyde F. & Dorothy M. Clark; Viola A. Gagnier; Kenneth O. & Pearl White; John A. T. & Isabelle Ellison; John R. & Armenta Yoder; Transamerica Title Insurance Co. of Arizona, Trust No. 6092; Country Escrow Service, Trust No. 9155-T; Arizona Land Title & Trust, Trust No. 6564-T; Vista Catalina Development; William N. & Jennie Rosecrans; Camino de la Sierra; Hazel & Joe Nichols; Saul & Suan Tobin; Los Arcos Apartments; Frank M. & Ruth Kay Richardson; Howard J. & Dorothy K. Gwenn; Helen J. Brodsky; Ben & Florence Welt; Max & Rebecca Egar; Arthur Corporation; Sol & Bella Bleier; Lawyers Title of Arizona, Trust No. 6910-T; Real Estate Enterprises, Inc.; Jack J. Sarver & Raymond F. Hayes; Oxford Homes, Inc.; Echo Ridge Co-operative No. 1; Ridge Co-operative No. 2; Solot Realty Co., Trust No. 87; Solot Realty Co., Trust No. 94; Mourice A. Wilson; Wilton H. & Ruth B. Cahn; Nicholas G. & Georgia Dussias; Roderick D. & Velda M. Tizzard; Solot Realty Co., Trust No. 88; Gelt Enterprises; Michael & Bernard Bortnick dba Northwood Towers; Thomas D. & L. Anne Trappman/Glenn D. & Ella Lawson; Alc & Anna Lee Burch/R.E. & Suzanne Trappman; John D. & Merry S. Meijer, Elizabeth D. Meijer; John D. & Merry S. Meijer; Transamerica Title Insurance Co. of Arizona, Trust No. RH 27496; Russell & Lorraine
(continued)

JURISDICTION

The Petition for Review was denied by the Supreme Court of Arizona on March 16, 1976. This Petition for Certiorari was filed less than ninety days from that date. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3), because a title, right, privilege or immunity is claimed to have been violated under the Constitution of the United States.

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[1] (continued)
M. Russo; Dodge Flower Apartments; James J. & Kathleen M. Haun, dba Ranch House Lodge; Arrowhead Land Investments, Inc.; Mary Hower & Edward West; The Tucson Company; Old Pueblo Apt. Co.; Michael Kahn; Robert Rhinesmith; Morton Fuchs; Ironwood Associates; Eastridge Terrace Assoc.; Howard A. & Mary B. Kaseman; Albert M. & Clare Schaeffer; Country Escrow Service, Trust No. 9099-T; Robert S. & Mary Pasternac; William A. & Pauline C. Mitchell; Fred Rosen; Transamerica Title Insurance Co. of Arizona, Trust No. RH-27311; Fred Rosen; M. Edna Record; Transamerica Title Insurance Co. of Arizona, Trust No. 27580; CAL/IND Enterprises; Country Escrow Service, Trust No. 9370-T; Stewart Title & Trust, Trust No. 0852; Stephen A. Joseph; Yale B. & Blossom Joseph; William & Nancy Halper; Neil Joseph, Yale B. & Blossom Joseph; Regency Apartments; James & Helen Leather; Salvatore & Rose Durante; Claridon L. & Joyce M. Sharp; David & Edith Millstone; Ben & Harriet Surlin; Alvernon-Monte Vista Co.; Spartan Arms Associates; Robert & Deborah Hoge; Liberty Apartments Associates; Lois M. Briggs/ Sutton Menard; Regency Square East Associates; Investment Assoc.; Clara A. Gallardo; William Lester & Mary B. Pritchett; Country Club Development; Philip & Blanche Wise; Arthur J. Kreizel; Mary Smith Weeks & Norman H. Smith, Jr., Trustees of N.H. Smith, Deceased; James Franklin, Roger & Angela Putzi; Roger & Angela Putzi; Al & Clare Schaeffer; Roger & Angela Putzi, Larry & Mary Lou Lyngholm; Simon Perri, Jr.; Roger & Angela Putzi; Roger Putzi; Helen Orcutt; Morris Glassberg; Donald & Melinda Stradley; Transamerica Title Insurance Co. of Arizona, Trust No. Rh-27171; Joseph Steinmetz; University Park Apartments; Donald S. & Mary Robinson; Tectonics,
(continued)

QUESTIONS PRESENTED

The Arizona State Board of Property Tax Appeals, in 1973, issued Equalization Order Number 5 to the County Assessors of the State of Arizona ordering valuation changes in accordance with said Order. The Petitioners' properties, being apartment-type properties were affected dramatically by these increased valuations whereas all other properties in the same Statutory Class were either not affected or only minimally affected. The questions raised are these:

1. Whether Equalization Order Number 5 has resulted, as to these Petitioners, in a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and the requirement of uniformity of treatment within the same class of property as required by the Arizona Constitution?

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States, Section I, states in pertinent part as follows:

> "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

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[1] (continued)
Ltd.; Lawyer's Title & Trust, Trust No. 7143; Richard & Jane Harris/E.B. Bunell; Kenneth & Mary Kamrath, David L. & Katherine Burns; Stewart Title & Trust, Trust No. 0367; Investment Venture Corp.; Esquire Apartments; Billy D. & Susan E. Collins; Joseph P. Lenihan; Arizona Title and Trust, Trust No. 8017; John and Armenta Yoder/Russell and Lorraine Russo; Thomas G. Beaham, III.

Article IX, Section I, of the Constitution of the State of Arizona states as follows:

> "The power of taxation shall never be surrendered, suspended, or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax . . ."

STATEMENT OF FACTS

For 1973 the Arizona State Legislature had classified all properties for Ad valorem tax purposes into four general classes. Classes One and Two dealt with railroad properties, mines, telephone and telegraph properties, electric utility properties and the like. The Third Statutory Class involved all other commercial or industrial property with the exception of farm property. Class Four properties were all other properties.

Petitioners' properties are duplexes and apartment properties, i.e., income-producing commercial property, and fall within Class Three. The Arizona Constitution requires uniformity of taxation within the same Class of property.

For administrative purposes the Department of Property Valuation, the State agency charged with supervising the various County Assessors, had sub-classified, by property type, the Statutory Classes into 95 separate sub-classifications. For example, "01" single family, "02" duplexes, "03" apartments, "04" hotels, "05" motels, etc., all as illustrated in Appendix .

In addition, each County in the State has been arbitrarily divided into districts, known as "map books," so that the taxable parcels could be located and identified,

illustrated on maps, and accumulated in books. The boundaries of these "map book" areas were defined so that approximately the same number of maps would be included in each book. Thus, this system was devised, and the boundaries defined, merely for ease of administration and storage purposes, and not along homogeneous neighborhood boundaries or for appraisal or valuation purposes.

In July of 1973, the State Board of Tax Appeals promulgated Equalization Order Number 5 requiring the County Assessors in each County to make adjustments in the valuations previously established by them to reflect increases as dictated therein. The manner in which this Equalization Order was to be applied may best be illustrated by the following example. In referring to the chart in Appendix , for example, in addressing the column marked "03" (apartments), in Book 101, the Assessor in Pima County, the County in which the Petitioners' properties are located, was required to increase the valuation previously established by him upon each apartment in that "map book" area by a factor of 1.194 or, in other words, each apartment was increased by 19.4%. Each "03" (apartment) in each "map book" area was increased by the percentage shown for that particular "map book" area and the same procedure was followed for many sub-classifications of property in thes various "map book" areas within Pima County.

Reference to the chart above-discussed reveals that a number of sub-classifications of property, although commercial and industrial property in the same Statutory Class as Petitioners' properties, were not even listed or studied and, together with others that were listed, were not increased at all. In addition, a number of sub-classifications within Petitioners' Statutory Class were increased by a

factor of 1.050 (5%), and others were increased by a factor of only 1.025 (2.5%). These percentages compare to increases of apartment-duplex properties up to approximately 43%. No other commercial or industrial properties were increased by percentages remotely approximating these amounts.

Petitioners contended throughout that "map book" areas were not proper sub-classifications of property for equalization (which Respondents admitted) since these "map book" areas are not homogeneous economic areas such that value influences were uniform throughout. These "map book" areas had been developed for other purposes entirely.

In addition, Petitioners contended throughout that the classification of apartments as defined by sub-classification "03" (being three rental units to infinity) was an unreasonable classification inasmuch as three-unit apartment complexes vary dramatically from three-hundred unit apartment complexes, and are not comparable one to another.

The basis for the Board's Equalization Order was a sales-ratio study conducted by a private company (CBM Corp.) for the Board. This study attempted to analyze the ratio between sales prices and the Assessor's valuation. In other words, if an apartment property sold within the previous three years, the study would analyze the ratio between the selling price and the valuation placed on the property by the Pima County Assessor.

Petitioners contended this study was fallacious for many reasons. For instance, both the Board and CBM had assumed all of the sales had been screened such that no trades were involved, no personal property was included

in the sales price, and many other factors excluded which would prevent the use of the sales price in the study. CBM advised the Board that this screening process was vital. However, no screening process had been utilized.

Also, the Board did not conduct the study for all Counties within Arizona nor did the Board study all sub-classifications of property, ignoring a number of sub-classifications which were industrial and commercial property. Several sub-classifications within the commercial and industrial class, although studied, escaped increase inasmuch as no sales had occurred. In other sub-classifications of commercial and industrial property, when sales had occurred, the Board ignored the study and failed to increase those properties. Unexplainable, however, in other sub-classifications of commercial and industrial property, where no sales occurred, the Board increased the valuations anyway. Members of the Board indicated during trial that apartments in only Pima County and Maricopa County (Phoenix) were raised although the sales-ratio study indicated increases were necessary in some of the other Counties.

Members of the Board even admitted that they did not treat all sub-classifications of commercial and industrial property in a uniform and similar manner but treated some properties entirely differently from others. A chart has been prepared, in Appendix , indicating the increases which should have been made to other sub-classifications of commercial and industrial property if the sales-ratio study had been applied in the same manner as it was applied to Petitioners' properties.

Furthermore, even within Pima County and amongst "03" properties – the same sub-classification, the Board admitted to having used different standards of valuation.

The sales-ratio study analyzed sales within the past year and also within the past three years, producing a ratio from each set of data. The Board admitted that, in some instances as to apartment properties in Pima County, the ratio obtained from using the past year's sales was employed as to some "map book" areas whereas the ratio produced utilizing the sales during the previous three years was employed for other "map book" areas and, for still other "map book" areas, the Board used neither but applied an arbitrary judgment factor.

The Board, in passing the Equalization Order, was acting on misinformation and lack of information, was using a different standard of valuation for each sub or sub-sub-class of property, was using a different standard of valuation for different "map book" areas within the same sub-classification of property, and used a study which was statistically improper and which CBM indicated could not be used for the purpose for which the Board used the study.

The evidence indicated that, prior to the Equalization Order, all commercial and industrial property within Pima County had been appraised in a uniform manner. By applying various factors to uniformly appraised property, great inequality and lack of uniformity resulted. Some properties in the same Statutory Class were left untouched in spite of evidence to the contrary or were not studied at all; other properties in the same Statutory Class were arbitrarily raised by factors that had no relationship to the sales-ratio study or any other fact (e.g., 2.5% or 5%); whereas Petitioners' properties were raised by dramatic amounts based upon a sales-ratio study, which was statistically improper and based upon fales and inaccurate information, or a judgment factor having no basis in fact or reason.

In its decision the Court of Appeals stated the sales-ratio study in Greenlee County was not used because the Board felt the valuations by the County Assessor were correct. This statement was inaccurate inasmuch as no sales ratio study was conducted for that County. The Court also stated the Board was justified in discarding the sales-ratio study in some instances because too many individual differences existed among properties. However, the evidence was replete that there were far more differences between apartments (from three rental units to infinity) than other sub-classifications when related to size and nature of improvements, age, location, etc. Finally, the Court indicated the Board was justified in failing to use the study for other sub-classifications in that the sales price included future increments of value which, by statute, are prohibited. However, during the trial, the Board indicated no effort had been made to exclude these factors. Therefor, all of the reasons for which the Court of Appeals justified the actions of the Board were factually incorrect.

Petitioners maintained throughout the Equalization Order was a violation of their right to equal protection of the law inasmuch as said Order produced a total lack of uniformity within the commercial and industrial Statutory Class.

The Trial Court found in Petitioners' favor and declared Equalization Order Number 5 void as to the Petitioners' properties and entered judgment rebating the excess taxes paid as a result thereof. A Motion for New Trial by Respondents was denied. Respondants appealed to the Court of Appeals, which reversed the Trial Court and denied Petitioners' Motion for Re-hearing. The Supreme Court of Arizona denied review of the case.

HOW FEDERAL QUESTION WAS RAISED

Petitioners filed a Complaint in the Superior Court of Pima County, State of Arizona, alleging, *inter alia*, lack of uniformity as required by the Arizona Constitution and a denial of Equal Protection under the Fourteenth Amendment of the United States Constitution. The Trial Court found in Petitioners' favor, ruling the Equalization Order was void as to these Petitioners. In its decision the Court of Appeals recognized the Constitutionality issue but, it is contended, chose to ignore the same, and reversed. The Supreme Court of Arizona denied review.

REASONS FOR GRANTING THE WRIT

The Arizona Court of Appeals totally ignored the requirement of uniformity and has, consequently, denied Petitioners equal protection under the law.

Despite Petitioners' arguments to the contrary, the decision by the Arizona Court of Appeals reveals the apparent misconception on the Court's part that uniformity yields to the statutory requirement of full cash value. For example, the Court's attention is invited to the following quotes from the decision by the Arizona Court of Appeals:

> "It must be emphasized that Appellees did not and do not now contend that their properties had been valued in excess of their full cash value as a result of Equalization Order Number 5."
>
> * * *
>
> "In order to show that the use of the map book was improper, Appellees point to two specific

> properties which on their face showed that they may not have been treated equally. However, there was no proof that, on the whole, use of the map book sales-ratio studies did not bring properties within the County nearer to full market value."

The tenor of the entire opinion by the Arizona Court of Appeals indicates a misconception that uniformity is not necessary if a property, or group of properties, is closer to full cash value regardless of their relationship with other properties in the same Class. This misconception flies in the face of many United States Supreme Court decisions. For example, in *Cumberland Coal Co. v. Board of Revision of Tax Assessments in Green County*, 52 S.Ct. 48, 284 U.S. 23, 76 L.Ed. 146, the Court stated:

> "It is established that the intentional systematic undervaluation by state officials of taxable property of the same Class belonging to other owners contravenes the constitutional right of one taxed upon the full value of his property."

See also *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 38 S.Ct. 495, 62 L.Ed. 1154; *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340; *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20, 28 St.Ct. 7, 52 L.Ed. 78; *Greene v. Louisville & Interurban Railroad Co.*, 244 U.S. 499, 37 S.Ct. 673, 61 L.Ed. 1280; *Stanley v. Supervisors*, 121 U.S. 535, 7 S.Ct. 1234, 30 L.Ed. 1000; *Cummings v. Bank*, 101 U.S. 153, 25 L.Ed. 903.

In this case Petitioners' properties were increased by Equalization Order Number 5 to, at least, 80% of full cash value. However, many sub-classifications of property

within the commercial and industrial Statutory Class were not increased at all or increased a minimal amount. The Board's own sales-ratio study indicated many of these properties needed substantial increases; however, the Board chose to ignore the study and these properties were left well below 80% of full cash value. The Board admitted to applying a different standard, and different methods of equalization, to these other properties in the same Class as Petitioners' properties.

All commercial and industrial properties were initially assessed by the Pima County Assessor based upon the cost approach to value, i.e., replacement costs new, minus depreciation. Thus, all commercial and industrial properties were originally assessed upon the same standard and utilizing the same valuation methods. The sales-ratio study conducted by the Board utilized a market approach to value, i.e., using the sales prices of "supposedly" comparable properties. Consequently, after the application of Equalization Order Number 5, some commercial and industrial properties were still valued on the basis of the cost approach, some were valued on the basis of the market approach and, when the Board used judgment factors unrelated to the sales-ratio study or any other facts, other properties were valued on the basis of approach. The Supreme Court has stated that constitutionally prohibited discrimination applies to taxation which in fact bears unequally on persons or properties of the same class and that differences in modes of assessment deny equal protection when they are shown to produce inequality. *Charleston Federal Savings & Loan Assoc. v. Alderson*, 324 U.S. 182, 65 S.Ct. 624, 89 L.Ed. 857. Unquestionably, the different modes and methods of assessment in this case have discriminated harshly against Petitioners inasmuch as their properties were increased dramatically compared with

all other properties in the commercial and industrial class. Furthermore, the very nature of a study involving sales discriminates against Petitioners' properties inasmuch as apartments and duplexes sell more readily than banks, high-rise office buildings, shopping centers, nursing homes, parking lots, and other commercial and industrial property. This being the case, it should have been obvious to the Board that the study was weighted against Petitioners' properties.

There can be no question this Equalization Order was intentional. By the same token, there can be no question the Equalization Order was systematic and that the discrimination resulting therefrom was the result of systematic, intentional acts by the Board. In *Cumberland Coal Co. v. Board of Revision of Tax Assessments in Green County, supra,* the Court stated:

"There is no question that the assessments under review were made pursuant to a deliberately adopted system. The case is not one of mere errors in judgment in following a proper method (Sunday Lake Iron Co. v. Wakefield, 247 U.S. 350, 352, 353, 38 S.Ct. 495, 62 L.Ed. 1154; Southern R. Co. v. Watts, 260 U.S. 519, 526, 43 S.Ct. 192, 67 L.Ed. 375). But one where the challenged discrimination resulted from a plan of assessment which was none the less systematic and intentional because of belief in its validity (Raymond v. Chicago Union Traction Co., 207 U.S. 20, 35, 37, 28 S.Ct. 7, 52 L.Ed. 78, 12 Ann. Cas. 757; Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 445, 43 S.Ct. 190, 67 L.Ed. 340, 28 A.L.R. 979; Chicago Great Western R. Co. v. Kendall, 266 U.S. 94, 98, 99, 45 S.Ct. 55, 69 L.Ed. 183)."

Petitioners believe the above quote is particularly applicable to this case. Regardless of the Board's belief in the validity of its Equalization Order, the end result was discriminatory as to Petitioners' properties. The Board admittedly treated properties of the same Statutory Class in a non-uniform fashion and equalized within that Statutory Class through the use of non-uniform standards, thereby creating inequality where uniformity previously existed. Furthermore, the Board did not conduct a sales-ratio study for all Counties. The Board did not conduct a sales-ratio study for all sub-classifications of commercial and industrial property within Pima County and admitted to having no information concerning these sub-classifications. Finally, the Board increased apartment properties in Pima and Maricopa Counties only, even when the sales-ratio study indicated increases were necessary for apartments in some of the other Counties. All of this, Petitioners contend, constitutes discrimination.

Petitioners contend the Board cannot systematically and intentionally use different rules for measuring or equalizing the value of property within the same Statutory Class if, by the use thereof, great inequality results. *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20, 28 S.Ct. 7, 52 L.Ed. 78. Also, the use of different modes and standards of assessment and equalization within the same Statutory Class of property has been held invalid when the methodology produces discriminatory inequality. *Charleston Federal Savings & Loan Assoc. v. Alderson,* 324 U.S. 182, 65 S.Ct. 624, 89 L.Ed. 857. If the end result is discriminatory in its equality and lack of uniformity, the assessing and equalizing Boards belief that their conduct was valid does not render it less vulnerable to attack. *Cumberland Coal Co. v. Board of Revision of Tax Assessments, supra.*

Some of the State Courts have had great difficulty in accepting sales-ratio studies. *Carpenter v. State Board of Equalization*, 178 Neb. 611, 134 N.W.2d. 272 (1965); *County of Blaine v. State Board of Equalization*, 180 Neb. 471, 143 N.W.2d. 880 (1966); *City of Newark v. Essex County Board of Taxation*, 124 N.J. Super. 76, 304 Atl. 2d. 761 (1973). In doing so, the Courts have required the sales to be scrutinized very closely after thorough investigation. The integrity of the study relies upon accurate data. Also, the practice of utilizing the ratio produced from sales for one year versus sales for three years and, finally, a "judgment" factor arbitrarily selected by the Board, has also been condemned. *Gage County v. State Board of Equalization*, 185 Neb. 749, 178 N.W.2d 759, (1970). Finally, carving out special districts for equalization, such as the Board did with "map book" areas, and equalizing within them, has been condemned as well. *County of Kearney v. State Board of Equalization*, 183 Neb. 329, 160 N.W. 2d 179 (1968). These actions by the Board, plus those mentioned elsewhere herein, Petitioners contend, are so arbitrary as to constitute constructive fraud upon the Petitioners.

The Arizona Court of Appeals felt it was required of Petitioners to prove bad faith by the Board. In the final paragraph of its decision, the Court stated:

> "We are not able to find from the evidence any bad faith on the part of the State Board of Tax Appeals and there is no evidence that any inequality was deliberately created."

Petitioners believe evidence of bad faith is not required. In *Cumberland Coal Co. v. Board of Revision of Tax Assessments, supra*, the United States Supreme Court indicated that, if the end result is systematic and intentional, belief as to the validity of the assessment is irrelevant. The

Arizona Court of Appeals even ignored the law in the State of Arizona relating to Boards of Equalization. In *Sparks v. McCluskey*, 84 Ariz. 283, 327 P.2d. 295 (1958), the Arizona Supreme Court stated:

> "Appellants say Plaintiffs did not sustain the burden of proving actual fraud. There is no necessity of proving actual fraud. There is no indication of any dishonest motives on the part of any of these officials. We are satisfied there were none but if the result of these intentional acts is discrimination, the assessments cannot stand irrespective of honest motives."

The Arizona Court of Appeals quoted, in its decision, from *Sparks v. McCluskey*, 80 Ariz. 15, 291 P.2d. 791 (1955), which went to the Arizona Supreme Court a second time. Petitioners' quote above is from the second *Sparks v. McCluskey* decision wherein the Arizona Supreme Court clarified its previous language. Thus, the Arizona Court of Appeals relied upon an earlier decision, the language of which was later clarified to indicate that bad faith was not necessary.

The decision by the Arizona Court of Appeals indicated Petitioners were attempting to invalidate the entire system which, presumably, meant the entire Equalization Order; however, this was not true and Petitioners were only seeking relief for their own properties. Additionally, the Arizona Court of Appeals indicated that, if any individual taxpayer was dissatisfied, he still had time to seek administrative review of his valuation; however, the Court of Appeals was again incorrect inasmuch as the time had expired, at the time the Equalization Order was issued, to seek any administrative review. Finally, contrary to state-

ments by the Court of Appeals, no prior notice of Equalization Order Number 5 was given.

Equalization Order Number 5, as it related to Petitioners' properties, constituted systematic, intentional discrimination by the State Board, thereby denying Petitioners equal protection under the law. The Trial Court concurred. The Arizona Court of Appeals reversed, and the Arizona Supreme Court denied review. It is prayed the United States Supreme Court will grant this Writ of Certiorari to the Supreme Court of the State of Arizona.

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APPENDIX A

Supreme Court

STATE OF ARIZONA
Phoenix 85007

March 17, 1976

STATE OF ARIZONA, COUNTY OF PIMA, STATE BOARD OF PROPERTY TAX APPEALS, COUNTY BOARD OF EQUALIZATION, PIMA COUNTY ASSESSOR, PIMA COUNTY TREASURER and THE CLERK OF THE SUPERIOR COURT OF THE STATE OF ARIZONA FOR THE COUNTY OF PIMA, *Appellants,* vs. RELLA VERDE APARTMENTS, INC., NO. 130-17-1870, *et al.*, *Appellees.*	**Supreme Court No. 12539-PR** **Court of Appeals No. 2 CA-CIV 1930** **Pima County No. 145522**

The following action was taken by the Supreme Court of the State of Arizona on March 16, 1976, in regard to the above-entitled cause:

"ORDERED: Petition for Review = DENIED."

Record returned to the Court of Appeals, Division Two, Tucson, this 17th day of March, 1976.

CLIFFORD H. WARD, Clerk
By /s/ MARY ANN HOPKINS
Mary Ann Hopkins
Deputy Clerk

APPENDIX B

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

[Filed February 24, 1976]

STATE OF ARIZONA, COUNTY OF PIMA, STATE BOARD OF PROPERTY TAX APPEALS, COUNTY BOARD OF EQUALIZATION, PIMA COUNTY ASSESSOR, PIMA COUNTY TREASURER and THE CLERK OF THE SUPERIOR COURT OF THE STATE OF ARIZONA FOR THE COUNTY OF PIMA, *Appellants,* vs. RELLA VERDE APARTMENTS, INC., NO. 130-17-1870, *et al.*, *Appellees.*	**Court of Appeals No. 2 CA-CIV 1930**

IT IS ORDERED that the Motion for Rehearing be, and the same is hereby, DENIED.

Dated: February 24, 1976.

/s/ LAWRENCE HOWARD,
Lawrence Howard, Chief Judge

/s/ HERBERT F. KRUCKER
Herbert F. Krucker, Judge

/s/ JAMES D. HATHAWAY
James D. Hathaway, Judge

APPENDIX C

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

[Filed January 20, 1976]

STATE OF ARIZONA, COUNTY OF PIMA, STATE BOARD OF PROPERTY TAX APPEALS, COUNTY BOARD OF EQUALIZATION, PIMA COUNTY ASSESSOR, PIMA COUNTY TREASURER and THE CLERK OF THE SUPERIOR COURT OF THE STATE OF ARIZONA FOR THE COUNTY OF PIMA, *Appellants,* vs. RELLA VERDE APARTMENTS, INC., NO. 130-17-1870, *et al.*, *Appellees.*	**Court of Appeals No. 2 CA-CIV 1930**

As Amended Feb. 20, 1976.
Rehearing Denied Feb. 24, 1976.
Review Denied March 16, 1976.

Suit was brought to challenge constitutionality of equalization order No. 5 by the State Board of Property Tax Appeals. The Superior Court, Pima County, Cause No. 145522, Lawrence W. Calligan, Former Judge and as Special Court Commissioner, found that the order was void as to certain plaintiffs and not as to others. The State county, State Board of Property Tax Appeals, etc., appealed. The Court of Appeals, Howard, C.J., held that the burden placed upon a taxpayer in challenging the tax equalization system is very heavy. . If individual inequities

existed in valuation, the property owners had a remedy by appeal to the Board to correct their specific situations; such individual inequalities were no reason to invalidate the entire system. In absence of evidence of any bad faith on the part of the State Board or evidence that any inequality in assessed valuation was deliberately created, and where no systematic, intentional discrimination was established, there was no question presented as to unconstitutionality of the assessment.

Reversed.

Though assessment statute prior to 1967 stated that certain rules would be used in determining assessment at full cash value, legislature in amending statute no longer intended to prescribe rules and methods to be used by State Board of Property Tax Appeals but rather gave Board very broad discretion, requiring only that property be listed on tax rolls at full cash value. A.R.S. §§ 42-143, 42-1612; A.R.S. Const. art. 9, § 1.

In view of clarity of meaning of tax assessment statute it was unnecessary to resort to rule that amendment which construes and clarifies prior statute will be accepted as declared intent of legislature when it adopted original act. A.R.S. § 42-143.

State Department of Property Valuation, in order to arrive at value of property within state, did not abuse discretion in taking statutory classifications, such as "residential" and using breakdowns into more specific types of property, *e.g.*, single family, hotels, condominiums, resorts, etc. A.R.S. § 42-143.

Statute providing for notice by certified or registered letter to property owner before increase or decrease of valuation by State Board of Property Tax Appeals was

applicable only to individual increases of valuation and did not apply to general increase or review by Board under statute which, prior to its amendment in 1973, did not require notice of any kind. A.R.S. § 42-144.

No notice to property owner was required as a matter of due process of law where State Board of Property Tax Appeals made general increase in assessed valuations of all taxable property in given division or district or of all property of certain class. A.R.S. § 42-144.

In its task of equalizing taxes, State Board of Property Tax Appeals was acting in quasi-judicial capacity. A.R.S. § 42-144.

Burden placed upon taxpayer in challenging tax equalization system is very heavy. A.R.S. § 42-144.

Value of property for tax purposes is matter of opinion and there must necessarily be left wide room for exercise of this opinion. A.R.S. § 42-144.

If individual inequalities existed in valuation of property for tax purposes, property owners had remedy by appeal to State Board of Property Tax Appeals to correct their specific situations; such individual inequalities were no reason to invalidate entire system. A.R.S. § 42-144.

In absence of evidence of any bad faith on part of State Board of Property Tax Appeals or evidence that any inequality in assessed valuation was deliberately created, and where no systematic, intentional discrimination was established, there was no question presented as to unconstitutionality of assessment. A.R.S. § 42-144.

Bruce E. Babbitt, Atty. Gen. by Donald P. Roelke, Asst. Atty. Gen., and Olgerd W. Kalyna, Special Asst. Atty. Gen., Phoenix, and Dennis DeConcini, Pima County Atty. by John R. Neubauer, Chief Civil Deputy County Atty., Tucson, for appellants.

Robert C. Stubbs & Associates, P.C. by Robert C. Stubbs and Charles L. Townsdin, Jr., Tucson, for appellees.

OPINION

HOWARD, Chief Judge.

The main issue in this case is the validity of Equalization Order No. 5, promulgated by the State Board of Property Tax Appeals.

As a result of *Southern Pacific Company v. Cochise County*, 92 Ariz. 395, 377 P.2d 770 (1963) and the legislation passed thereafter which requires a yearly update in the valuation of real property in the state, the Board embarked on a three-year program designed to bring the value of all such property up to full cash value.

Prior to the promulgation of the order in question, county assessors valued improved properties by using a cost approach and relying upon cost manuals devised by the State Department of Property Valuation. Because of the requirement of annual valuation this method was proving ineffectual in the larger counties of Pima and Maricopa since, by the time a certain class of property had been appraised, changing market factors rendered such appraisals obsolete.

It became obvious that some mass appraisal technique was necessary and therefore the State Department of Property Valuation employed a company called CBM to devise

a mass appraisal system. Mr. Viegas of that company devised a formula using multiple linear regression (MLR) which would relate characteristics of buildings to market prices paid for them as is evidenced by affidavits of value filed pursuant to A.R.S. § 42-1612. This computerized program was initially devised only for the assessment of single family homes. The implementation of the system by the county assessors proposed for the year 1973 an average 31% increase in the values of residential properties. This led to what appellants termed the "assessors' revolt" which resulted from their view that the use of the system would create a great increase in the value of residential properties without any increase in the value of commercial properties. The various county assessors were therefore hesitant to use the program.

The assessors turned for guidance to the State Board of Tax Appeals to whom they presented evidence at a formally conducted hearing in February of 1973. The Pima County Assessor accepted the new residential values as devised by CBM but the Maricopa County Assessor refused to do so. This hearing alerted the Board to the necessity for further orders to be issued in their equalization capacity.

The Department turned to CBM and Mr. Viegas for the creation of a computerized mass appraisal system. CBM developed such a system which analyzed the full cash values set by the assessor and compared them with sales data already on file. The sales data came from the affidavits of value which are required to be recorded with every deed or instrument of conveyance. These affidavits are subject only to a minimum amount of screening. A comparison of the assessor's value to the actual sale value resulted in a sales ratio. Using the analysis designed by

CBM the Board developed certain multiplying factors to be applied to the properties which the Board felt were substantially undervalued as compared with the general level of assessment throughout the counties as well as the state. The result was Equalization Order No. 5 issued on July 16, 1973 which stated:

> "It is hereby ordered that the values of all properties in the various counties in the State of Arizona be changed as indicated by the application of the proper factor to the full cash value of the property of various land use classification codes in each map book as set out on the charts in the attached Exhibit 'A'.

The charts are broken down first by county, second by the land use classification codes developed by the Arizona State Department of Property Valuation, and third by the map books in each county.

The change in full cash value of each parcel so affected shall be determined by multiplying the proper factor indicated on the attached Exhibit 'A' by the existing full cash value of both land and improvements for each parcel within the book for the land use classification code number to which the factor applies.

Exhibit 'A' and its charts are hereby incorporated into this order and made a part of this order.

These changes by factoring, where necessary pursuant to this 1973 Equalization Order No. 5, are to be made after the action, ordered by the Arizona State Board of Property Tax Appeals in 1973 Equalization Orders No. 2, No. 3, and No. 4 regarding certain residential property in Maricopa, Pima, and Yavapai Counties, has been taken."

In this lawsuit appellees contended that Equalization Order No. 5 was unconstitutional in that it violates Article 9, Sec. 1 of the Arizona Constitution which requires that all taxes ". . . shall be uniform upon the same class of property within the territorial limits of the authority levying the tax, . . ." and offends the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. They asked the trial court to void Equalization Order No. 5 and return to them the taxes which they had paid under protest. It must be emphasized that appellees did not and do not now contend that their properties have been valued in excess of their full cash value as a result of Equalization Order No. 5. Instead, they claimed that as a result of Equalization Order No. 5 the State is treating various types of property in an unequal manner.

The trial court found Equalization Order No. 5 to be void as to appellees whose property was designated as 02 (duplexes), 03 (apartments), and 07 (condominiums and townhouses). As to the plaintiffs who were not in the foregoing category, the trial court ruled that their property was not affected by the judgment, and Equalization Order No. 5 was not void as to them or their properties.

Appellants have presented four questions for review, however, we need only discuss one since it is dispositive of this appeal. That question is whether Equalization Order No. 5 is void as to appellees who own 02, 03 and 07 property.

Appellants have presented four questions for review, den of proof on the issue of unconstitutionality. Appellees seek to uphold the decision of the trial court, in the first instance, by asserting that the overall method used by the State Board of Tax Appeals was without and contrary to statutory authority.

In order to arrive at the value of property within the state, the State Department of Property Valuation took the statutory classifications and further broke them down into more specific types of property, giving them a classification code. In all, there were ninety-five such types of property coded. As an example, residential property was broken down into nine types to wit: 01, single family; 02 double and duplexes; 03, apartments; 04, hotels; 05, motels; 06, resorts; 07, condominiums; 08, trailer parks; and 09, improved rural home sites (now subdivisions). In arriving at its property valuations the Tax Appeals Board used the coded classifications promulgated by the State Board of Property Valuation. Furthermore, the Tax Board used the map books in Pima County to arrive at its estimation of full cash value. It must be stressed that the Board broke the statutory classes of property down into types only in determining the full cash value and not in determining the tax rate to be applied to such property.

Appellees claim that there is no statutory authority for valuing the property contained in the statutory classifications by breaking them down into specific types. They have cited to us cases from other jurisdictions which we have read and which are inapposite in view of the authority given by virtue of A.R.S. Sec. 42-143 which states:

> "On or before its annual meeting in July, the Board shall examine and compare the valuations of property in the several counties and if necessary equalize them so that all property subject to property taxation is listed on the rolls as its full cash value."

Prior to the amendment of A.R.S. Sec. 43-143 in 1967 and 1971, the foregoing statute contained the following language:

"B. * * *

1. If the board believes that the aggregate valuation of any class of property of a county should be raised or reduced without raising or reducing other classes of property of the county, or without raising or reducing it in the same ratio, the board may add to or take from the aggregate valuation of any class such percentage as it believes will raise or reduce such class to th the full cash value thereof.

2. If the board believes that the aggregate valuation of any class of property of a city or town, or of any class of property of a county not in a city or town, should be raised or reduced without raising or reducing other classes of property of the county, or without raising or reducing other classes of property of the county, or without raising or reducing them in the same ratio, the board may add to or take from the aggregate valuation of any class of property of the city or town, or any class of property not in the city or town, such percentage as it believes will raise or reduce such class to the full cash value thereof."

[1] The statute as it existed prior to 1967 stated that the foregoing rules were to be used in determining the assessment at full cash value. As can be seen, the legislature in amending the statute, no longer intended to prescribe the rules and methods which were to be used by the Board in arriving at full cash value. The statute thus gives the Board a very broad discretion, requiring only that the property be listed on the tax rolls at full cash value. The cases upon which appellees rely are inapposite since they

involve statutes identical or similar to A.R.S. Sec. 42-143 prior to its amendment.

[2, 3] Appellants suggest that A.R.S. Sec. 42-143 as it was amended in 1974, after the date of Equalization Order No. 5, was amended specifically as a result of this lawsuit and as a clarification of the meaning of A.R.S. Sec. 42-143. They urge us to follow the rule of statutory construction that an amendment which construes and clarifies a prior statute, will be accepted as the declared intent of the legislature when it adopted the original act. *City of Mesa v. Killingsworth*, 96 Ariz. 290, 394 P.2d 410 (1964). It is clear that under A.R.S. Sec. 42-143 as amended, Laws 1974, Ch. 164, Sec. 7, the use of the classifications of property established by the Department of Property Valuation is specifically authorized. However, in view of the broad language of A.R.S. Sec. 42-143, as it existed prior to the amendment, we do not have to resort to the rule of statutory construction suggested by appellants. We do not find that the Tax Board abused its discretion by using the property classifications of the State Department of Property Valuation.

Appellees, in essence, mounted four attacks on Equalization Order No. 5. First, they attacked the use of the sales ratio and factors developed by CBM. Second, they attacked the method by which the sales ratios were specifically applied to their property. Third, they attacked the overall general method used by the Board in arriving at the factors to be applied under Equalization Order No. 5. Fourth, they attacked the failure to give them individual notice.

In attacking the use of the sales ratio and the factors subsequently, developed, appellees contended that CBM used the wrong formula, that its methods were statistically

unsound and that the sales used contained errors and were not indicative of full cash value. In arriving at the sales ratio in Pima County for apartments, the Board used the data produced by CBM which relied on 388 sales. Of these 388 sales, CBM, in order to compensate for gross variations which it believed would cause distortion of the result, rejected the highest 5% and the lowest 5% of sales. Furthermore, it clearly appears that CBM did not check the sales in order to determine whether or not there were infirmities in the sales which would detract from their use as indicators of full cash value.

An expert witness hired by the appellees examined the method used by CBM and concluded that it was statistically unsound and that the formula used by CBM in reaching its conclusions was incorrect. Mr. Viegas disagreed with the appellees' witness on the statistical soundness of this method and further testified that the difference between the formula which appellees' witness said was the correct one and the one he used was so trivial as to be unworthy of discussion.

Appellees put on witnesses who had checked some 100 of the 388 sales and concluded that the sales should not have been used because they did not represent fair market value. According to these witnesses, the property values included sums which represented the sale of personal property along with the realty. For this and various other reasons, they concluded that the sales might be above or below market value. Furthermore, it was appellees' contention that the use of installment sales was erroneous since market value represents the amount which would be paid for the property in cash rather than the amount paid in installments.

The members of the Board testified that as far as the sales were concerned, they were under the impression that the sales had been screened prior to their use by CBM, but that in any event, because of the number of sales used, they did not believe that the errors submitted by appellees would have affected their decision. Furthermore, in arriving at the full cash value and sales ratio, the Board chose a factor by which the assessed valuation was multiplied resulting in a valuation representing only 80% of the property's full cash value.

In arriving at the valuation for apartment houses, the Board used the map books which are used by the county for identifying the location of property within the county. The Board first found the sales ratio for the entire county and determined that apartments were appraised at 67% of their full cash value. It then developed a factor of 1.194 by which the existing appraised value was to be multiplied. The Board then examined the sales in each map book, developing a sales ratio and factor for each individual map book when there were sufficient sales within that map book to justify the use of the sales ratio. Of necessity, this meant that the valuation of apartment houses would vary from map book to map book, since the development of a sales ratio in a given area depended upon the assessed valuation and sales within each map book.

Appellees' third assault on Equalization Order No. 5 can be broken down as follows: First, the sales ratio was only used by the Board in Maricopa and Pima counties and not in other counties. Second, the use of the sales ratio was not used at all in Greenlee County. Third, in some instances where the sales ratio study showed properties to be undervalued, these properties were not increased by an amount which the sales ratio study showed was necessary

to bring them to full cash value, and in other instances, the value of the property in other classifications was not raised at all, or was raised by an arbitrary figure of 5%.

Lastly, appellees attacked Equalization Order No. 5 on the ground that there was no notice to them pursuant to A.R.S. Sec. 42-144.

[4, 5] Taking appellants' last claim first, at the time Equalization Order No. 5 was promulgated, A.R.S. Sec. 42-144 provided:

> "The state board of tax appeals may at any time require any county board of supervisors or the clerk thereof and the department to furnish statements showing the valuation of the property of any person within any county or within the state. The board shall consider and equalize such valuations and after hearing may increase or decrease the valuation of the property of any person, provided that no increase in any valuation shall be made without first giving at least five days notice, by certified or registered letter to the owner of the property to be affected at his address shown on the then existing tax roll, of its intention to do so and of the time and place of the hearing of the board at which such increase is proposed to be acted upon. . . ."

This statute was applicable only to *individual* increases of valuation by the Board. It did not apply to a general increase or review by the Board under A.R.S. Sec. 42-143 which, prior to its amendment in 1973 did not require notice of any kind. We do note that notice of contemplated increases in value by the Board were given in Pima County

by publication and property owners were given an opportunity to express their views before the Board. However, notice to individual property owners is not required where a board of equalization or review makes a general increase in the assessed valuations of all taxable property in a given division or district (or of all property under a certain class) because the statute does not require such notice, and such a notice requirement is not essential to due process of law. See *State ex rel. Miller v. Dwyer*, 208 Kan. 437, 493 P. 2d 1095 (1972). See also Annot. 24 A.L.R. 331, Supp. 84 A.L.R. 197, "Tax Assessment-Increase-Notice".

[6] This brings us to the vital issue in this case, the method used by the Board in arriving at assessed valuations. By what standard does the court judge the action of the Board? In its task of equalizing taxes, the Board was acting in a quasi-judicial capacity. In the very early case of *United Globe Mines v. Gila County*, 12 Ariz. 217, 222, 100 P. 774, 776 (1909), the court stated:

> ". . . [T]he court may only inquire into such action for the purpose of ascertaining whether the territorial board of equalization had jurisdiction to make the order, or to determine, when the issue be raised, whether the board of equalization acted in bad faith or so arbitrarily as to amount to constructive fraud in adopting its scale of valuation. . . ."

In the case of *Cochise County v. Southern Pacific Company*, 99 Ariz. 385, 409 P.2d 549 (1966), the Court quoted *United Mines* with approval and further stated:

> "Although the Board acted on *incorrect* information, there was no showing that the rate was grossly excessive, or that the action of the board

> was in fact arbitrary or fraudulent." (Emphasis added) 99 Ariz. at 394, 409 P.2d at 555.

[7, 8] Finally, in *Security Properties v. Arizona Department of Property Valuation*, 112 Ariz. 54, 537 P.2d 924, 926 (1975), the Court stated:

> "In *McCluskey v. Sparks*, 80 Ariz. 15, 291 P. 2d 791 (1955), we said that to place the county assessor's conduct in a category of an unconstitutional assessment there must be more than a dispute between the taxpayers and the taxing officials as to valuations placed upon properties and that before a court will interfere, it must be clearly shown that the assessments which are unequal are the result of systematic and intentional conduct – in the sense that the inequality would thereby deliberately created. . . ."

It is thus the law that the burden placed upon the taxpayer in challenging the equalization system is very heavy, and justly so. Appraising is not an exact science, it is merely an *estimate* of value. Indeed, the testimony in this case was that if two appraisers are within 10% of each other in their valuations of the full cash value of property they are both considered equally correct. While the courts can compel boards of equalization and assessors to act, no court can decide for them what their judgment ought to be. As was stated in *Danforth v. Livingston*, 23 Mont. 558, 59 P. 916 (1900):

> "* * * The value of property is a matter of opinion, and there must necessarily be left a wide room for the exercise of this opinion. Absolute accuracy cannot always be obtained. Courts cannot be called upon, in every instance,

> to settle differences of opinion in this regard between the assessing officer and the property owner. Otherwise, courts would be converted into assessing boards, and, in assuming to act as such, would usurp the powers lodged elsewhere by the lawmaking branch of the government."

If we attempted to vary the standards used, courts would be embroiled in annual disputes between taxpayers and the assessing authority, and the legislative branch responsible for approving budgets and appropriations would be in a constant quandary.

[9] In order to show that the use of the map book was improper, appellees pointed to two specific properties which on their face showed that they may not have been treated equally. However, there was no proof that, on the whole, use of the map books sales ratio studies did not bring properties within the county nearer to full market value. If individual inequalities exist, then these property owners have a remedy by appeal to the State Board of Tax Appeals to correct their specific situations; but this is no reason to invalidate the entire system.

As far as the Board's failure to use the sales ratio on other types of property when the survey showed that a large discrepancy apparently existed, members of the Board testified that in some instances there were not enough sales to justify the use of the sales ratio and they therefore had to exercise their own personal judgment. In other instances the ratio was not used because the members of the Board believed that there were too many individual differences among properties within that class to justify use of the sales ratio. In other cases it was not used because the Board believed that the price paid for the properties reflected future anticipated property value increments, the use of these increments being specifically prohibited by A.R.S. Sec. 42-123(A)(5). The Board felt that no increase in assessed valuation of some properties should be made because its assessed valuation, in their opinion, reflected full cash value and appellees presented no evidence that this was not true. In Greenlee County the sales ratio study was not used because the Board felt that because of the size of, and the limited number of properties in the county, the valuations by the county assessor were correct.

[10] We are not able to find from the evidence any bad faith on the part of the State Board of Tax Appeals and there is no evidence that any inequality was deliberately created. Appellees did not establish systematic, intentional discrimination and there was accordingly no question presented as to the unconstitutionality of the assessment. *Security Properties v. Arizona Department of Property Valuation, supra.*

The judgment is reversed.

KRUCKER, and HATHAWAY, JJ., concur.

* * * * *

APPENDIX D

STATUTORY CLASS 3 PROPERTIES
(A.R.S. § 42-136)

STATUTORY CLASS 3 PROPERTIES (A.R.S. § 42-136)

CLASS OF PROPERTY	RATIO BY CBM SALES STUDY	FACTOR IF CBM RATIO USED	FACTOR USED BY STATE BOARD
04-Hotel	.87	.919	1.000
05-Motel	.61	1.311	1.000
06-Resorts	.93	.860	1.000
08-Trailer Parks	.81	.987	1.000
09-Improved Rural Home-sites (Non-Subdiv.)	.57	1.403	1.000
10-Vacant Commercial	.56	1.428	1.050
11-Commercial	.68	1.176	1.050
12-Store & Office Comb.	.65	1.230	1.050
13-Dept. Store Mult. Story	no sales		1.050

CLASS OF PROPERTY	RATIO BY CBM SALES STUDY	FACTOR IF CBM RATIO USED	FACTOR USED BY STATE BOARD
14-Shopping Centers	.59	1.355	1.050
15-Office Buildings Mult. Story	.53	1.509	1.000
16-Bank & Savings & Loan	no sales		1.050
17-Service Stations-Petroleum Bulk Plants	.86	.930	1.000
18-Auto Sales Repair & Storage	.66	1.212	1.050
19-Nursing Homes	not studied		1.000
20-Restaurants & Bars	.70	1.142	1.050
21-Medical Buildings	.50	1.600	1.050
22-Parking Lots	.51	1.568	1.050
23-Nurseries & Green Houses	.77	1.038	1.050

CLASS OF PROPERTY	RATIO BY CBM SALES STUDY	FACTOR IF CBM RATIO USED	FACTOR USED BY STATE BOARD
24-Drive In Theaters, Golf Courses, Race Tracks	no sales		1.025
25-Theaters, Bowling Alleys, Skating Rinks	no sales		1.025
27-Clubs & Lodge Halls	no sales		1.050
30-Vacant Industrial	.62	1.290	1.050
31-Manufacturing-Durable & Non Durable Product	.57	1.403	1.000
32-Manufacturing-Food & Kindred Products	.54	1.481	1.050
34-Lumbering, Saw Mills, Planning Mills	no sales		1.050
35-Cotton Gins & Compress	no sales		1.000

CLASS OF PROPERTY	RATIO BY CBM SALES STUDY	FACTOR IF CBM RATIO USED	FACTOR USED BY STATE BOARD
36-Mining, Quarring & Processing	no sales		1.000
37-Warehousing, Storage & Truck Terminals	.79	1.012	1.000
40--Farm Property	.30	2.666	1.000
47-Ranch Property	.10	8.000	1.000
85-Undeveloped Rural Lands	.42	1.904	1.000
86-Undeveloped Rural Lands with Misc. Improvements	.66	1.212	1.000

APPENDIX E
STANDARD LAND USE CLASSIFICATION CODES

00 RESIDENTIAL PROPERTY
01 Single Family
02 Double & Duplex
03 Apartments
04 Hotel
05 Motel
06 Resorts
07 Condominiums
08 Trailer Parks
09 Improved Rural Homesite (Non-Subdiv.)

10 COMMERCIAL PROPERTY
11 Commercial Buildings One Story
12 Store & Office Comb.
13 Dept. Store Mult. Story
14 Shopping Centers
15 Office Buildings Mult. Story
16 Bank & Savings & Loan
17 Service Stations-Petroleum Bulk Plants
18 Auto Sales Repair & Storage
19 Nursing Homes
20 Restaurants & Bars
21 Medical Buildings
22 Parking Lots
23 Nurseries & Green Houses
24 Drive In Theaters, Golf Courses, Race Tracks
25 Theaters, Bowling Alleys, Skating Rinks
27 Clubs & Lodge Halls

30 INDUSTRIAL PROPERTY
31 Manufacturing-Durable & Non Durable Products

32 Manufacturing-(Food & Kindred Products)
34 Lumbering, Saw Mills, Planning Mills
35 Cotton Gins & Compress
36 Mining, Quarrying & Processing
37 Warehousing, Storage & Truck Terminals

40 FARM PROPERTY
41 Field Corps
42 Vineyards
43 Other Tree Crops
44 Citrus
45 High density livestock production
*46 Citrus (immature)
47 RANCH PROPERTY

*50 UTILITIES PROPERTY
*51 Railroad Operating Property
*52 Telephone & Telegraph Operating Property
*53 Pipe Line Operating Property
*54 Gas & Electric Utility Operating Property
*55 Water Utility Operating Property
*56 Community Antenna T.V. Systems and Micro-Wave Service
*57 Salt River Project
*58 Airline Flight Property
*59 Private Car Companies

60 NATURAL RESOURCES
*61 Producing Mines

Numbers Not Used:
26, 28, 29, 33, 38, 39, 46, 48 & 49

*63 Producing Oil & Gas Interests
66 Non Producing Mine Property
68 Mineral Rights Only
69 Standing Timber

70 PERSONAL PROPERTY
71 Household
72 Mobile Homes
73 Commercial
74 Industrial
75 Mining, Quarrying & Processing
76 Farm & Ranch Mach. & Equip.
77 Merchants & Manufacturing Inventory

78 LIVESTOCK & MISCELLANEOUS ANIMALS
79 Beef Cattle
80 Dairy Cattle
81 Sheep
82 Swine
83 Horses
84 Poultry

85 UNDEVELOPED RURAL LANDS
86 Undeveloped Rural Lands-with *Misc.* Imps.
87 Non Qualifying Agricultural Land
88 Lands not Included in any other class
89 Improvements on State Lease, Mining Claims (Unpatented) etc.

90 TAX EXEMPT PROPERTY
91 Schools
92 Religious & Charitable
93 Hospitals

94 Public
95 Cemetery

Numbers Not Used:
62, 64, 65, 67, 96, 97, 98 & 99
*Appraised by the Department

DPV 9-70

[Filed July 7, 1975]

* * * * *

ARIZONA STATE BOARD OF PROPERTY
TAX APPEALS
1605 W. Jefferson St.
Phoenix, Arizona 85007

July 16, 1973

1973 EQUALIZATION ORDER NO. 5

It is hereby ordered that the values of all properties in the various counties in the State of Arizona be changed as indicated by the application of the proper factor to the full cash value of the property of various land use classification codes in each map book as set out on the charts in the attached Exhibit "A."

The charts are broken down first by county, second by the land use classification codes developed by the Arizona State Department of Property Valuation, and third by the map books in each county.

The change in the full cash value of each parcel so affected shall be determined by multiplying the proper factor indicated on the attached Exhibit "A" by the existing full cash value of both land and improvements for each parcel within the book for the land use classification code number to which the factor applies.

Exhibit "A" and its charts are hereby incorporated into this order and made a part of this order.

These changes by factoring, where necessary pursuant to this 1973 Equalization Order No. 5, are to be made after the action, ordered by the Arizona State Board of Property Tax Appeals in 1973 Equalization Orders No. 2, No. 3, and No. 4 regarding certain residential property in Maricopa, Pima, and Yavapai Counties, has been taken.

/s/ Lowell L. Monsees
Lowell L. Monsees
Chairman

/s/ Howard L. Relfe
Howard L. Relfe
Member

/s/ Charles Moody
Charles Moody
Member

EXHIBIT TWO OF COMPLAINT

July 16, 1973

EXHIBIT "A"

1973 EQUALIZATION ORDER NO. 5

Attached are charts for each of the 14 counties in the State of Arizona. These charts are first divided by county, second by land use classification codes developed by the Arizona State Department of Property Valuation and third by each map book within that classification code.

These charts contain various factoring numbers to be used to determine the present full cash value of all property within each country. The present full cash value is obtained by multiplying the proper factor indicated on the charts by the existing full cash value of both land and improvements of each parcel in the map book and land use classification code to which that factor applies.

10 PIMA County D.D. Apt.

Book \ Class. Code	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15
101	1.070	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
102	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.200	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
103	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
104	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
105	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
106	1.000	1.000	1.270	1.311	1.000	1.000	1.000	1.091	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
107	1.000	1.000	1.333	1.333	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
108	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
109	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.151	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
110	1.000	1.000	1.455	1.429	1.000	1.000	1.000	1.377	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
111	1.120	1.000	1.250	1.356	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
112	1.040	1.000	1.404	1.176	1.000	1.000	1.000	1.313	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
113	1.190	1.000	1.096	1.143	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
114	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.167	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
115	1.060	1.000	1.194	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
116	1.000	1.000	1.039	1.194	1.000	1.000	1.000	1.120	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
117	1.000	1.302	1.333	1.159	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
118	1.140	1.000	1.176	1.067	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
119	1.090	1.000	1.455	1.194	1.000	1.000	1.000	1.024	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
120	1.200	1.000	1.311	1.127	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000

10 PIMA County D.D. [illegible]

Book \ Class. Code	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15
121	1.030	1.000	1.127	1.194	1.000	1.000	1.000	1.000	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
122	1.000	1.000	1.159	1.159	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
123	1.100	1.000	1.176	1.270	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
124	1.000	1.390	1.290	1.143	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
125	1.000	1.093	1.231	1.127	1.000	1.000	1.000	1.400	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
126	1.000	1.000	1.127	1.067	1.000	1.000	1.000	1.183	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
127	1.000	1.000	1.111	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
128	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.235	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
129	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
130	1.000	1.000	1.000	1.194	1.000	1.000	1.000	1.091	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
131	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
132	1.000	1.000	1.000	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
133	1.000	1.000	1.039	1.194	1.000	1.000	1.000	1.120	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
134	1.040	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
135	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.012	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
136	1.190	1.000	1.176	1.194	1.000	1.000	1.000	1.050	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
137	1.120	1.000	1.176	1.194	1.000	1.000	1.000	1.000	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
138	1.120	1.000	1.176	1.194	1.000	1.000	1.000	1.120	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
139	1.200	1.000	1.176	1.194	1.000	1.000	1.000	1.024	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
201	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000

10 PIMA County

Book \ Class. Code	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15
202	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
203	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.037	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
204	1.160	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
205	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
206	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
301	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
302	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
303	1.170	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
304	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.000	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
305	1.200	0.928	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
306	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
307	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000
401	1.000	1.000	1.176	1.194	1.000	1.000	1.000	1.077	1.000	1.000	1.050	1.050	1.050	1.050	1.050	1.000

32a

10 PIMA County

Book \ Class. Code	16	17	18	19	20	21	22	23	24	25	27	30	31	32	34	35
101	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
102	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
103	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
104	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
105	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
106	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
107	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
108	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
109	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
110	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
111	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
112	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
113	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
114	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
115	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
116	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
117	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
118	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
119	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
120	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000

33a

10 PIMA County

Book \ Class. Code	16	17	18	19	20	21	22	23	24	25	27	30	31	32	34	35
121	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
122	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
123	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
124	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
125	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
126	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
127	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
128	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
129	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
130	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
131	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
132	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
133	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
134	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
135	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
136	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
137	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
138	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
139	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
201	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000

10 PIMA County

Book \ Class. Code	16	17	18	19	20	21	22	23	24	25	27	30	31	32	34	35
202	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
203	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
204	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
205	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
206	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
301	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
302	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
303	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
304	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
305	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
306	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
307	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000
401	1.050	1.000	1.050	1.000	1.050	1.050	1.050	1.050	1.025	1.025	1.050	1.050	1.000	1.050	1.050	1.000

10. PIMA County

Book \ Class. Code	36	37	40	47	85	86										
101	1.000	1.000	1.000	1.000	1.000	1.000										
102	1.000	1.000	1.000	1.000	1.000	1.000										
103	1.000	1.000	1.000	1.000	1.000	1.000										
104	1.000	1.000	1.000	1.000	1.000	1.000										
105	1.000	1.000	1.000	1.000	1.000	1.000										
106	1.000	1.000	1.000	1.000	1.000	1.000										
107	1.000	1.000	1.000	1.000	1.000	1.000										
108	1.000	1.000	1.000	1.000	1.000	1.000										
109	1.000	1.000	1.000	1.000	1.000	1.000										
110	1.000	1.000	1.000	1.000	1.000	1.000										
111	1.000	1.000	1.000	1.000	1.000	1.000										
112	1.000	1.000	1.000	1.000	1.000	1.000										
113	1.000	1.000	1.000	1.000	1.000	1.000										
114	1.000	1.000	1.000	1.000	1.000	1.000										
115	1.000	1.000	1.000	1.000	1.000	1.000										
116	1.000	1.000	1.000	1.000	1.000	1.000										
117	1.000	1.000	1.000	1.000	1.000	1.000										
118	1.000	1.000	1.000	1.000	1.000	1.000										
119	1.000	1.000	1.000	1.000	1.000	1.000										
120	1.000	1.000	1.000	1.000	1.000	1.000										

10 PIMA County

Book \ Class. Code	36	37	40	47	85	86										
121	1.000	1.000	1.000	1.000	1.000	1.000										
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123	1.000	1.000	1.000	1.000	1.000	1.000										
124	1.000	1.000	1.000	1.000	1.000	1.000										
125	1.000	1.000	1.000	1.000	1.000	1.000										
126	1.000	1.000	1.000	1.000	1.000	1.000										
127	1.000	1.000	1.000	1.000	1.000	1.000										
128	1.000	1.000	1.000	1.000	1.000	1.000										
129	1.000	1.000	1.000	1.000	1.000	1.000										
130	1.000	1.000	1.000	1.000	1.000	1.000										
131	1.000	1.000	1.000	1.000	1.000	1.000										
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134	1.000	1.000	1.000	1.000	1.000	1.000										
135	1.000	1.000	1.000	1.000	1.000	1.000										
136	1.000	1.000	1.000	1.000	1.000	1.000										
137	1.000	1.000	1.000	1.000	1.000	1.000										
138	1.000	1.000	1.000	1.000	1.000	1.000										
139	1.000	1.000	1.000	1.000	1.000	1.000										
201	1.000	1.000	1.000	1.000	1.000	1.000										

10 PUMA County

Book \ Class Code	36	37	40	47	85	86										
202	1.000	1.000	1.000	1.000	1.000	1.000										
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204	1.000	1.000	1.000	1.000	1.000	1.000										
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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1814

RELLA VERDE APARTMENTS, INC., *et al.*,
Petitioners,

v.

STATE OF ARIZONA, COUNTY OF PIMA, STATE BOARD OF PROPERTY TAX APPEALS, COUNTY BOARD OF EQUALIZATION, PIMA COUNTY BOARD OF SUPERVISORS, PIMA COUNTY ASSESSOR, PIMA COUNTY TREASURER,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF FACTS	2
HOW FEDERAL QUESTION WAS RAISED	6
REASONS FOR DENYING THE WRIT	7
CONCLUSION	11

TABLE OF AUTHORITIES

Cases:

Apache County v. Atchison, Topeka & Santa Fe Ry. Co., 401 U.S. 1005, 91 S. Ct. 1257, 28 L.Ed.2d 542, 106 Ariz. 356, 476 P.2d 657, cert. den., 401 U.S. 1005, 91 S.Ct. 1257, 28 L.Ed.2d 542 5

Charleston Federal Savings and Loan Association v. Alderson, 324 U.S. 182, 65 S.Ct. 624, 89 L.Ed 857 10

Concordia Fire Insurance Company v. Illinois, 292 U.S. 535, 52 S.Ct. 830, 78 L.Ed. 1441 11

Copper Queen Cons. Min. Co. v. Territorial Board of Equalization, 206 U.S. 474, 27 S.Ct. 695, 51 L.Ed. 1143 11

Page

Cumberland Coal Co. v. Board of Revision of Tax Assessments,
284 U.S. 23, 52 S.Ct. 48, 76 L.Ed. 146 8

General Talking Pictures Corp. v. Western Electric Company,
304 U.S. 175, 58 S.Ct. 849, 851, 82 L.Ed. 1273, 1275 11-12

Lawrence v. State Tax Commission,
286 U.S. 276, 52 S.Ct. 556, 76 L.Ed. 1102, 87 A.L.R. 374 2

Lenslite Co. v. Zocher,
95 Ariz. 208, 388 P.2d 421 3

Maish v. Territory of Arizona,
164 U.S. 599, 17 S.Ct. 193, 41 L.Ed. 567 9

McCluskey v. Sparks,
80 Ariz. 15, 291 P.2d 791 8

Rowley v. Chicago and N.W. Ry. Co.,
293 U.S. 102, 55 S.Ct. 55, 79 L.Ed. 222 8

Sioux City Bridge Co. v. Dakota County,
260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340, 28 A.L.R. 979 8

Southern R. Co. v. Watts,
260 U.S. 519, 526, 67 L.Ed. 375, 387, 43 S.Ct. 192 9

Stanley v. Board of Supervisors of the County of Albany,
121 U.S. 535, 7 S.Ct. 1234, 30 L.Ed. 1000 9

Page

Sunday Lake Iron Co. v. Wakefield Township,
247 U.S. 350, 352, 353, 62 L.Ed. 1154-1156, 38 S.Ct. 495 9

Other Authorities:

A.R.S. § 42-141 3
A.R.S. § 42-141 C 3
A.R.S. § 42-143 4

Arizona Rules of Civil Procedure, Rule 52(a) 3

U.S. Supreme Court Rules, Rule 19(1)(a) 8
23(1)(f) 6, 7
23(1)(j) 3

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BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Opinion below is appended to the Petition for Writ of Certiorari. The Opinion was delivered on January 20, 1976, and amended on February 20, 1976. Motion for Rehearing was denied on February 24, 1976, and the Supreme Court of Arizona denied review on March 16, 1976.

The Appendix at page 9a (fourth paragraph) omitted a portion of that Opinion. That portion reads:

> "Appellants claim that Appellees did not sustain their burden of proof on the issue of unconstitutionality."

JURISDICTION

Respondents do not question the jurisdiction as set forth in the Petition. Respondents are doubtful, however, that the constitutional question has been properly preserved for review by this Court. The decision below rests upon fair and substantial bases, without the direct resolution of the constitutional question. Respondents believe that this Court's review by certiorari should not be invoked under the principles in *Lawrence v. State Tax Commission*, 286 U.S. 276, 52 S. Ct. 556, 76 L. Ed. 1102, 87 A.L.R. 374.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioners fairly quote portions of the United States Constitution as well as the Constitution of the State of Arizona. Respondents question, however, whether Petitioners had properly presented the equal protection clause issue before the court below.

STATEMENT OF FACTS

Petitioners' Statement of Facts makes some unwarranted conclusions as to the evidence which was presented at the trial level of this case. To be sure, it is difficult, if not impossible, to determine the ultimate resolution of factual conflicts made by the trial court. No findings of fact or

conclusions of law were requested, and none were made. (See Arizona Rules of Civil Procedure, Rule 52(a) and *Lenslite Co. v. Zocher*, 95 Ariz. 208, 388 P.2d 421 at 426.)

Petitioners have failed to append the Judgment of the state court as required by Rule 23(1)(j), U.S. Supreme Court Rules. Insofar as pertinent, the Amended Judgment reads:

> "4. Equalization Order No. 5, issued by the Arizona State Board of Property Tax Appeals on July 16, 1973, is void as it relates to the properties of the Plaintiffs herein categorized as "02", "03" and "07" in the Standard Land Use Classification Code issued by the Department of Property Valuation. All other Plaintiffs not in these categories are not affected by this Judgment and Equalization Order No. 5 is not void as to those Plaintiffs or their properties.
>
> 5. The Court further finds that Plaintiffs' properties should be taxed at the 1973 rate, based on the assessed value which existed on the Plaintiffs' properties prior to the imposition of Equalization Order No. 5."

Respondents believe that the salient factual predicate upon which the Arizona Court of Appeals has rendered its Opinion are more accurately and lucidly set out in the Opinion itself (see pages 6a through 9a of Appendix to Petition).

It must be emphasized, however, that the Arizona State Board of Tax Appeals is a body created by statute (Arizona Revised Statutes § 42-141) and consists of three members appointed by the Executive Branch of the state government. Possession of certain qualifications is a prerequisite to the appointment. A.R.S. § 42-141 C. Among their several duties

is a responsibility to assure equalization of values of properties subject to ad valorem taxation, both on state and county wide basis. A.R.S. § 42-143.

During tax year 1973, the Board discharged that duty by the promulgation of Equalization Order No. 5. The Board found justification for its action from information supplied to it in formal hearings, from its own investigation, and from a sales-ratio study conducted by a private firm retained for that specific purpose. In so doing, the Board acted in good faith and without any intention to place a disproportionate assessment on the Petitioners' properties. In point of fact, the members of the Board believed that the modest increases in value reflected by the Order were necessary to assure more equal treatment to all properties within the State. The trial court did not find any systematic and intentional conduct to deliberately create inequality. The Court of Appeals in reviewing the record specifically concluded:

> "We are not able to find from the evidence any bad faith on the part of the State Board of Tax Appeals and there is no evidence that any inequality was deliberately created."

Whatever the Petitioners' contentions may have been at the trial, the record before this Court does not support the conclusions made by Petitioners in their Statement of Facts. Suffice to say that there is no basis for the assertions made in the Petition that the Court of Appeals of the State of Arizona was "factually incorrect."

The ultimate operative facts are as follows:

The State of Arizona placed all property subject to ad valorem taxation into four classes and assessed these classes at various percentages of full cash value. This system withstood the challenge of constitutionality in *Apache County v. Atchison, Topeka & Santa Fe Ry. Co.*, 401 U.S. 1005, 91 S.Ct. 1257, 28 L.Ed.2d 542, 106 Ariz. 356, 476 P.2d 657, with this Court denying certiorari at 401 U.S. 1005, 91 S.Ct. 1257, 28 L.Ed.2d 542.

The individual county assessors were not able to annually update the values of all properties to keep up with inflationary and market trends. Consequently, the values of properties under scrutiny had been "frozen" for several years. During 1973, a computerized system of valuation of single-family residential properties had been devised and implemented. This resulted in an overall increase of approximately 30% in values of all such properties. No corresponding method of annual updating had been developed in that particular year for other types of properties.

The Board of Tax Appeals, through a series of equalization orders, required the assessors to increase certain assessments by specific fixed percentages. The Petitioners' properties on the whole were increased approximately 20%. These orders were effective for one year only, since the institution of new and updated procedures allowed annual revaluation of all properties in subsequent years. It was the opinion of the Board that the orders achieved greater equality in all property values than existed prior to their institution.

The trial court did not make a finding that the Petitioners were the victims of unequal treatment. Indeed, no finding at all was made in regard to the ultimate result of the equalization order. It is true that the trier of fact voided the Order as applied to the Petitioners only, but it did not state the grounds upon which it made its ruling.

One of the principal contentions by Petitioners below was a challenge to the *statutory authority* of the Board to enter the Order. On appeal, the court concluded that not only did Petitioners fail in their proof of intention to discriminate, but also failed to establish that overall inequality, indeed, existed. For these reasons, Respondents strongly challenge the bare conclusion found in the Petition that "said Order produced a total lack of uniformity." The factual conclusion is purely unilateral and not supported either by the Opinion of the Court of Appeals or the trial record itself.

HOW FEDERAL QUESTION WAS RAISED

Respondents believe that the Petition fails to comply with Rule 23(1)(f), U.S. Supreme Court Rules. To be sure, the denial of Equal Protection under the Fourteenth Amendment of the United States Constitution was first included in the Petitioners' Complaint. Petitioners did not, however, seek or receive a specific ruling of the trial court on this particular question. Numerous other non-constitutional grounds had been urged which in themselves could have accounted for judgment in the trial court.

In an attempt to sustain the Judgment on appeal, general reference to the Equal Protection Clause of the Fourteenth Amendment was made. However, it is apparent from the Opinion that the thrust of Petitioners' argument was directed to other issues. They claimed specifically as follows:

A. That there is no statutory authority for the Order;

B. That the Order was arbitrary and amounted to an abuse of discretion; and

C. That the Order was procedurally defective for a lack of prior notice to the taxpayers.

Following the rendition of the decision of the Court of Appeals, Petitioners filed an extensive Motion for Rehearing. As a result, the Court of Appeals corrected certain errata by an Order dated February 20, 1976.

A review of this Motion for Rehearing will demonstrate that the Equal Protection Clause argument was not put into sharp focus so as to properly preserve the matter for review by this Court.

It is small wonder that the Petition does not indicate the manner in which the federal question sought to be reviewed was raised. It does not show the way in which this question was passed upon by the court. Neither does it contain pertinent quotations of specific portions of the record or a summary thereof and it does not have reference to places in the record where the matter appears. (Obviously, no portions of the record, voluminous or otherwise, have been included in an appendix to the Petition.) Respondents respectfully urge that Petitioners have failed to show that the federal question was timely and properly raised so as to give this Court appropriate basis to review the Judgment on writ of certiorari.

REASONS FOR DENYING THE WRIT

In the first instance, the Petitioners have failed to fully comply with the requirements of Rule 23(1)(f), U.S. Supreme Court Rules. As was pointed out above, the noncompliance comes about as a result of their failure to obtain definitive rulings on the question at the trial court and appellate levels.

Secondly, Petitioners have failed to properly frame and establish the factual predicate upon which the constitutional question now raised can be determined. There is a total lack of factual determination that an inequality did, in fact, exist or that it was deliberately created. The Arizona Court of Appeals Opinion states:

> "We are not able to find from the evidence any bad faith on the part of the State Board of Tax Appeals and there is no evidence that any inequality was deliberately created. Appellees did not establish systematic, intentional discrimination and there was accordingly no question presented as to the unconstitutionality of the assessment." 544 P.2d at 682, 25 Ariz. App. 458.

Finally, the Petition fails to show any special or important reasons for the granting of the Writ. There is a complete absence of a showing of any federal questions of substance not heretofore determined by this Court or that the state court has decided the question not in accord with applicable decisions of this Court. (Rule 19(1)(a), U.S. Supreme Court Rules.)

The decision below recognized the constitutional principles discussed by the Arizona Supreme Court in *McCluskey v. Sparks*, 80 Ariz. 15, 291 P.2d 791. The latter decision, which comprehensively states the law of Arizona on the subject, found almost exclusive support in the teachings of the Supreme Court of the United States. These include the well-established guidelines of *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 43 S. Ct. 190, 67 L.Ed. 340, 28 A.L.R. 979, and *Rowley v. Chicago and N.W. Ry. Co.*, 293 U.S. 102, 55 S. Ct. 55, 79 L.Ed. 222. Nor was *Cumberland Coal Co. v. Board of Revision of Tax Assessments*,

284 U.S. 23, 52 S. Ct. 48, 76 L.Ed. 146, overlooked. (Something which is now suggested by the Petition.)

The case now sought to be reviewed involves simply a difference of opinion between the assessing authorities and the taxpayers and could arguably involve errors in judgment on the part of the Board of Tax Appeals. It falls squarely within the category of cases discussed by *Cumberland Coal Co. v. Board of Revision of Tax Assessments, supra,* when the Court stated at 52 S. Ct. 49:

> "The case is not one of mere errors in judgment in following a proper method (*Sunday Lake Iron Co. v. Wakefield Township*, 247 U.S. 350, 352, 353, 62 L.Ed. 1154-1156, 38 S. Ct. 495, *Southern R. Co. v. Watts*, 260 U.S. 519, 526, 67 L. Ed. 375, 387, 43 S. Ct. 192).

It is well recognized that a board of equalization acts in a judicial or quasi-judicial capacity and is not subject to collateral attack. *Stanley v. Board of Supervisors of the County of Albany*, 121 U.S. 535, 7 S. Ct. 1234, 30 L.Ed. 1000.

In *Maish v. Territory of Arizona*, 164 U.S. 599, 17 S. Ct. 193, 41 L.Ed. 567, at 571, this Court stated:

> "It is unnecessary to determine whether this board erred in its judgment as to the value of this property, whether it would not have been better to have made further examination and taken testimony as to the cost of construction, present condition, etc. Matters of that kind are left largely to the discretion and judgment of the assessing and equalizing board, and if it has acted in good faith its judgment cannot be overthrown. (Citing case)."

The Arizona decision sought to be reviewed is fully in accord with *Charleston Federal Savings and Loan Association v. Alderson*, 324 U.S. 182, 65 S. Ct. 624, 89 L.Ed. 857.[1] The appellants' argument there was not unlike the attack made by Petitioners here. In rejecting the argument, this Court said:

> "Appellants argue that denial to them of the equal protection of the laws is established by the proof of the assessor's discrimination in his mode of assessment of the same kind of class 1 property belonging to different taxpayers, and that this discrimination is shown to be 'intentional and systematic.' But this argument overlooks the well established rule that the constitutional prohibition applies only to taxation which in fact bears unequally on persons or property of the same class and that mere differences in modes of assessment do not deny equal protection unless they are shown to produce such inequality. (Citing cases) Nor does the equal protection clause prohibit inequality in taxation which result from mere mistake or error in judgment of the tax officials, (Citing cases) or which is not shown to be the result of intentional and systematic undervaluation of some but not all of the tax property in a single class. (Citing cases)." at 89 L.Ed. 863-864.

[1] Factually, this case is most analogous to the contentions made by Petitioners, and should by itself be dispositive of the issues raised.

Petitioners suggest that their right to equal protection of the laws has been transgressed because of an apparent lack of mathematical precision in the Board's arrival at Equalization Order No. 5. Yet, arithmetic equivalents in valuation of property cannot be expected and are not required. *Concordia Fire Insurance Company v. Illinois*, 292 U.S. 535, 52 S. Ct. 830. 78 L.Ed. 1441, Cf., *Charleston Federal Savings and Loan v. Alderson, supra.* Similar orders of the Board of Equalization had been approved by this Court even prior to Arizona's Statehood. *Copper Queen Cons. Min. Co. v. Territorial Board of Equalization*, 206 U.S. 474, 27 S. Ct. 695, 51 L.Ed. 1143. In short, this subject has long been fully exhausted by decisions of the United States Supreme Court and needs no further elucidation. The Arizona ruling is completely in accord with those decisions. Petitioners' rights have been fairly adjudicated in the state court systems and no cogent reason appears for this Court to be concerned with so trivial a matter.

CONCLUSION

Respondents have demonstrated that the Petition is procedurally deficient, the alleged constitutional question had not been sufficiently and properly preserved for review and that in any event, the decision of the Arizona Court of Appeals, as approved by the Arizona Supreme Court, is fully in accord with longstanding opinions of the United States Supreme Court.

The question presented is insubstantial and amounts to no more than a bona fide factual disagreement between a group of taxpayers and the assessing authorities. Review of the evidence or inferences drawn from it is not a sufficient cause to grant the writ. *General Talking Pictures Corp.*

v. Western Electric Company, 304 U.S. 175, 58 S.Ct. 849, 851, 82 L.Ed. 1273, 1275.

For these reasons, Respondents urge that the Petition for Writ of Certiorari be denied.

Respectfully submitted this _____ day of July, 1976.

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Supreme Court, U. S.
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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

I

JURISDICTION – FEDERAL QUESTION RAISED

Relying upon Rule 23(1)(f), U.S. Supreme Court Rules, Respondents contend the federal question has not been preserved. Petitioners disagree. In the pleadings and throughout a lengthy trial, the issue of uniformity and discrimination was constantly probed. To append the portions of the trial record raising this issue would entail appending the entire record. Furthermore, permeating the entire Court of Appeals' decision was a discussion of the issue of uniformity and discrimination. In fact, the Court of

Appeals' decision rested upon a determination that, although discrimination may have been proven, bad faith had not been shown. Obviously, the federal question has been explicitly raised.

Respondents also allege failure of compliance with Rule 23(1)(j), U.S. Supreme Court Rules, in failing to append the judgment of the State Court. That Rule indicates Petitioners must append the judgment or decree of the State Court for which review is sought. Since Petitioners are seeking review of the decision of the Arizona Court of Appeals, and the denial of review by the Arizona Supreme Court, Petitioners assert this Rule requires the appendage of those two decisions. Since these two decisions were appended, Petitioners contend full compliance has been made.

Finally, Petitioners contend compliance has been made with Rule 19(1)(a), U.S. Supreme Court Rules, inasmuch as, it is believed, the Arizona Courts have decided this case inapposite to principles previously announced by the United States Supreme Court.

II

Factually, although Respondents contend the State Board found justification for its actions from information supplied in formal hearings, its own investigation and from a sales-ratio study, the testimony indicated members of the Board had no factual basis for making dramatic increases in Petitioners' properties as opposed to minimal, or in many cases, no increases in other properties within the same Statutory Class. Furthermore, the increases to Petitioners' properties were not "modest" as contended by Respondents but, in some

cases, were in excess of forty percent (40%) higher than the valuation previously ascribed to the property by the Pima County Assessor. To be sure, many of the Petitioners' properties were increased about twenty percent (20%), but none of the other properties within Petitioners' Statutory Class were increased more than five percent (5%), while many were not increased at all. This disparity in treatment occurred in the face of a sales-ratio study indicating most of these other properties were "ripe" for increases similar to that suffered by Petitioners' properties.

Respondents contend the Court of Appeals "concluded that not only did Petitioners fail in their proof of intention to discriminate, but also failed to establish that over all inequality, indeed, existed." (RES. BRF. 6) A reading of the Court of Appeals' decision reveals the contrary. In its final paragraph the Court clearly stated there was no evidence that any inequality was deliberately created and that Petitioners failed to establish systematic, intentional discrimination. Consequently, the Court of Appeals did not find discrimination didn't exist but that Petitioners had failed to prove the discrimination was systematic, intentional or as a result of bad faith.

As stated in the Petition, it is Petitioners' contention bad faith is not required if the end result is systematic, intentional discrimination, *Cumberland Coal Company v. Board of Revision of Tax Assessments*, 52 S. Ct. 48, 284 U.S. 23, 76 L.Ed. 146; *Sparks v. McCluskey*, 84 Ariz. 283, 327 P.2d 295; and surely this Equalization Order was systematic and intentional on the part of the Board.

In arguing for denial of the Writ, Respondents would have the Court believe this case involves only a difference of opinion between the assessing authorities and

Petitioners, and merely involves possible errors of judgment. Petitioners strenuously disagree. It cannot be an error in judgment in failing to study all of the Counties within the State of Arizona, nor may it be an error in judgment to fail to study several sub-classifications of property within Petitioners' own Statutory Class, nor is it an error in judgment to utilize a study weighted against Petitioners' properties inasmuch as they sell more frequently than all others within the Statutory Class, nor is it an error in judgment to ignore the sales-ratio study in all sub-classifications of property within a Statutory Class except the Petitioners' properties, nor is it a mere error in judgment to fail to screen the sales which were the basic data for the Board's entire action, to mention only a few of the discrepancies discovered. By the same token, these are not errors in mathematical precision as suggested by Respondents.

Respondents cite *Maish v. Territory of Arizona*, 164 U.S. 599, 17 S. Ct. 193, 41 L.Ed. 567, but that case is inappropriate inasmuch as it merely involved a disagreement between a taxpayer and assessing authorities as to the proper valuation of the taxpayer's properties. Certainly, a case involving a mere question of over-evaluation of taxpayer's property could hardly be further from the issue raised in the instant case. Respondent also cites *Copper Queen Consolidated Mining Company v. Territorial Board of Equalization*, 206 U.S. 474, 27 S. Ct. 695, 51 L.Ed. 1143, but, again, that case is not precedent. Therein, no infringement of the equal protection clause was alleged nor was discrimination or lack of uniformity even at issue. In that case, the Territorial Board of Equalization raised the aggregate value of various Statutory Classes of property within various Counties in Arizona. The question of statutory authority was raised and disposed

of by the Court. Finally, Respondents cite *McCluskey v. Sparks*, 80 Ariz. 15, 291 P.2d 791, knowing full well that decision was later expanded and clarified in *Sparks v. McCluskey*, 84 Ariz. 283, 327 P.2d 295, wherein the Court indicated that, in Arizona, bad faith or actual fraud are not necessary but if the result of intentional acts is discrimination, the assessment cannot stand irrespective of honest motives.

Petitioners agree with Respondents that principles of law uttered in *Charleston Federal Savings & Loan Association v. Alderson*, 324 U.S. 182, 65 S. Ct. 624, 89 L. Ed. 857, are applicable herein but disagree that the facts are analogous. There, the taxpayer was complaining that different techniques of valuation had been used to arrive at the full value of similar types of property within the same Statutory Class. The Court was concerned with the original assessment of the property and not the subsequent process of equalization. The taxpayers in that case failed to prove the values assigned to the other properties were less than their true value; thus, no discrimination was shown to exist. However, in the instant case, the Board's own study indicated most of the other types of property within Petitioners' Statutory Class were in need of increases which, in many cases, would have exceeded the increases assigned to Petitioners' properties. However, without factual reason, the Board failed to increase these properties or increased them negligibly (and even failed to analyze or study some of the property within the Statutory Class).

Thus, in its process of "equalizing," the State Board treated properties within the same Statutory Class in a different manner utilizing different standards and, consequently, produced a lack of uniformity where uniformity

previously existed. The end result was blatant systematic, intentional discrimination against Petitioners' properties, irrespective of the presence of honest motive, and a denial of equal protection under the law.

For the foregoing reasons, as well as those which have been urged in the Petition, Petitioners pray the Court grant their Writ of Certiorari.

Respectfully submitted,

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